IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.NO.187 OF 2003

The Maharashtra State Finance Corporation,
having Head Office at
Excelsior House,
9th floor, Bombay 400 001
and Regional Office at
Office Complex Building,
6th floor, M.I.D.c.,
Wagle Estate, Thane-400 064 .. Appellant

vs.

1. Plastcon Engg. Pvt. Ltd.
   67-F, Venus Co-op.Hsg. Soc. Ltd,
   Worli, Seaface,
   Mumbai 400 018

2. Shri Ajitkumar Bhattacharjee

3. Mrs. Padma Ajitkumar Bhattacharjee

both residing at 67-F,
Venus Co-operative Hsg. Soc. Ltd.,
Worli, Sea face,
Mumbai 400 018. .. Respondents

Mr. M.P.Rege i/b.M.P.Rege & Co, Advocates for the Appellant.

Mr.N.M.Ganguly, Advocate for the Respondent Nos.1 to 3.

CORAM : A.S.OKA, J.

DATED : 1st February, 2005.

ORAL JUDGMENT :

1. This Appeal is preferred by the original Defendant for challenging the judgment and order dated 17.4.2002 passed by the learned 3rd Joint Civil Judge, Sr.Division, Thane. By the impugned judgment and order, the learned trial Judge allowed the application for temporary injunction at exhibit 5 made by Respondents/Plaintiffs and directed both the parties to maintain status-quo till final decision of the suit.

2. Before considering the submissions made by the learned Counsel for the parties, it will be necessary to refer to the facts of the case in brief. The Appellant is a Corporation duly constituted under the State Financial Corporation Act, 1951 (hereinafter referred to as the said Act of 1951). The Respondent No.1 is a Private Limited Company and the Respondent Nos.2 and 3 are the directors of the Respondent No.1 company. The Appellant, in the year 1991 sanctioned term loan of Rs.40,00,000/- in favour of Respondent No.1 against various securities. In the year 1992, the appellant sanctioned additional loan of

Rs.7,25,000/- in favour of the Respondent No.1. The Appellant also granted Seed capital incentive in favour of the Respondent No.1. The case of the Respondents in the suit filed by them is that the repayment of the loan was rescheduled as agreed by the appellants by their letter dated 24.5.1994 and that the same was acted upon by both the parties. The contention of the Respondents is that as per the alleged modified schedule of repayment, the entire term loan of Rs.47,25,000/- has been repaid by the Respondent No.1 to the Appellant with interest.

3. It is an admitted position that the Appellant initiated action under Section 29 of the said Act of 1951 and possession of the assets of the Respondent No.1 was taken over by the Appellants. The substantive prayers made in the plaint are as under :

> a) It be declared that a new modified schedule of repayment of entire term loan with interest was agreed and admitted by the Defendants by their letter dated 24th May, 1994 and the same was acted upon by both the plaintiffs and Defendants.
>
> b) It be further declared that as per the said new modified schedule of

repayment of the entire term loan dated 24th May, 1994, the Plaintiff No.1 paid the entire term loan of Rs.47,25,000/- (Rupees forty seven lacs twenty five thousand only) with interest theron;

c) It be further declared that the Defendants are now estopped from denying the new schedule of repayment of loan dated 24th May, 1994;

d) The Defendants be ordered and be directed by a mandatory order and direction of this Hon'ble Court, directing the Defendants to recast the whole accounts of the Plaintiff No.1 in terms of the said new modified schedule of repayment of loan dated 24th May 1994 and to submit the same before this Hon'ble Court and also to furnish certified true copies of the ledger Folio No.P00991 and P00993 of the Plaintiff No,1;

A prayer was also made in the suit for ordering the Appellant to release and redeem the mortgaged premises and to reconvey and/or to reassign the mortgaged properties in favour of the Respondent No.1.

4. The application at exhibit 5 was made by the Respondents for interim relief. In the said application a prayer was made for temporary injunction restraining the Appellants from auctioning, selling or transferring the mortgaged properties as referred to in the schedule to the

deed of Mortgage dated 6.3.1992. Another prayer made in the said application was for temporary mandatory injunction directing the appellants to return and hand over to the Respondents Share Certificate No.270 issued by the Venus Co-operative Housing Society Limited, in respect of the flat no 67-F in the building of the said society. Lastly, a prayer was also made in the said application for temporary mandatory injunction directing the appellants to recast the whole account of the Respondent No.1 in terms of the new modified schedule of repayment of loan dated 24.5.1994.

5. The Appellants contested the suit by filing written statement. It is stated in the written statement that on 31.7.2001 the appellant issued notice under Section 29 of the said Act of 1951 calling upon the Respondents to pay sum of Rs.79,31,000/- which was then payable and stating therein that if the dues were not paid, possession of the mortgaged assets will be taken over. The case of the Appellants is that possession was taken over on 17.8.2001. The suit is also

contested by the Appellants on merits by pointing out the schedule of repayment of loan was never modified as contended by the respondents. A case has been made out that as on 17.8.2001 a sum of Rs.86,05,872/- was due and payable by the Respondents.

6. By the impugned judgment and order the learned Trial Judge held that Respondents have made out a prima facie case and balance of convenience lies in favour of the Respondents. On the issue of irreparable loss also the learned Judge held in favour of the Respondents.

7. Shri Rege, learned Counsel appearing for the Appellants relied upon a judgment of the Apex Court reported in 2003(4) ALL MR page no. 808 (SC) (Haryana Financial Corporation & Anr vs. M/s. Jagdamba Oil Mills & Anr.) and submitted that the scope of judicial review of action taken by the Appellant under Section 29 of the Act of 1951 is very limited. He submitted that Civil Court cannot interfere with the action under Section 29 unless it is shown that the Appellant

Corporation has not followed provisions of the statute or unless it is shown that the Appellant has acted unfairly or that the action was malafide. He submitted that unless any of the aforesaid circumstances are established even a wrong action under Section 29 cannot be subject to a challenge in Civil Court. He has invited my attention to the documents on record of the suit and submitted that the reliance placed by the Respondents on letter dated 24.5.1994 is completely misplaced. He submitted that the letter dated 24.5.1994 sent by the appellant to respondent No.1 will have to be read with reference to the application dated 3.5.1994 made by the Respondent No.1 to the Appellant. He has also taken me through various letters which are on record. He submitted that there is no clear finding recorded by the trial Court that prima face case has been made out.

8. Shri Ganguly, learned Counsel appearing for the respondent has also taken me through the copies of the letters which are on record. He submitted that the instalments indicated in letter

dated 24.5.1994 were fixed in full and final settlement of the claim of the Appellant, and therefore, there was no occasion for the Appellant to initiate proceeding under Section 29 of the said Act of 1951. He submitted that the impugned order is operating against the appellant for almost three years and even assuming that the appellants have any case, in the appeal from order the said order may not be interfered with and the suit can be heard expeditiously. He submitted that in view of the contents of the letters sent by the appellants and especially internal communication dated 13.5.1994, the Respondents have prima facie proved that the repayment of loan amount was rescheduled.

9. I have considered the rival submission. The letter dated 3.3.1994 was sent by respondent No.1 to the Managing Director of the appellants. The last paragraph of the said letter reads thus :

> "Considering order in hand and expected order we can only achieve a target of Rs.60 lacs in the 1994-95 financial year that therefore can only generate Rs.15 lacs to pay the overdue interest and running interest. Our payment schedule is

1994					
Apr/May	July	Nov	Jan.	Feb.	
Rs.2	1.5	4	5	2.5	:15 lacs

1995-96			
July	Sept.	Jan.	Mar.
5.	8(int)	6	4

The above will cover the backlog interest of 94-95, running interest of 95-96 and repayment of principal amount of Rs.15 lacs. We also expect a turnover of 125 lacs in 96-97 and will be able to generate Rs.30 lacs and will be in a position to pay interest and principal amount of further Rs.15 lacs."

Thus, offer of the respondents was that if the instalments from April/May 1994 to March 1996 were paid as set out in the said letter, the amount of instalments will cover the backlog interest of 1994-95, running interest of 1995-96, and repayment of principal amount of Rs.15 lacs. It is clearly stated that considering the expected turnover of the year 1996-97 the Respondents will be able to generate Rs.30 lacs and will be in a position to pay interest and further principal amount of Rs.15 lacs. The said letter of the Respondents was considered by the Appellants and with reference to the said letter communication dated 24.5.1994 was issued by the Appellants to the Respondent No.1. The relevant part of the

said letter reads thus :

> "Please refer to your letter dated 3.3.1994 and subsequent discussion your representative had with out Managing Director on the above subject. After examining your request the Corporation has decided to allow your company to pay the dues of the Corporation as per the schedule given below :-
>
> 1994-95 (Rs. in lakhs)

April/May	July	Nov.	Jan.	Feb.
2.00	1.5	4.00	5.00	2.50

> 1995-96

July	Sept	Jan.	March
5.00	8.00(Int)	6.00	4.00

> . It will be observed from the above schedule that Rs.2.00 lakhs have fallen due in the month of April, 1994 and May 1994. You are, therefore, requested to pay the said amount immediately."

The letter dated 3.3.1994 sent by the Respondent No.1 makes it clear that the principal amount payable as on that day was much more than Rs.15 lacs. All that can be said from the letter dated 24.5.1994 is that the suggestion made by the Respondent no.1 by letter dated 3.3.1994 was accepted by the Appellant. Thus, the proposal of the Respondent No.1 to pay a part of the principal amount amounting to Rs.15 lacs and backlog

interest of 1994-95 and running interest of 1995-96 in instalments as indicated in the said letter was accepted by the Appellant. There is nothing in the letter dated 24.5.1994 to show that Appellant agreed to accept the nine instalments set out in the said letter in full and final settlement of the entire claim of the Appellant.

10. Further correspondence on record clearly supports what has been stated above. The letter dated 31.10.1995 sent by the Respondent No.1 to the Appellant is on record. Relevant paragraph of the said letter reads thus:

> "We are now executing an Export order of Rs.78.7 lacs and holding L.C. for Rs.59.02 lacs. The imported items required to complete the order has been delayed and as a result we are in a position to complete the part order only by end Dec.95 and cash in part of the L.C. by Jan.96 and remaining by March 96. Accordingly we will be able to pay Rs.9 lacs in Jan.96 and next Rs.8 lacs by March 1996.
>
> These payments will bring down our loan to Rs.38.5 lacs by March 96. Looking at the future business we are confident to liquidate our loan by 1998 as originally anticipated.
> We sincerely request you to accept our request."

In the said letter it is clearly stated that even if sum of Rs.8 lakhs is paid by the Respondent No.1 in March 1996, the loan amount repayable by the Respondent No.1 will be reduced to Rs.38.5 lacs by March 1996. Further, it is clearly stated that Respondent No.1 was confident of liquidating the loan by 1998. This letter itself, prima facie, completely shatters the case of the Respondent No.1. Reliance is placed on internal communication dated 13.5.1994 sent by the Asst. Manager, Zone (II) to the Sr. Regional Manager, of the Appellant, Thane. The said letter will not help the Respondent No.1 as the said letter refers to the offer given by Respondent No.1 by letter dated 3.3.1994. Reference will have to be made to further letter dated 20.5.1998 sent by the Respondent No.1 to the Appellant by which offer is made to pay instalments of Rs.3 lacs as mentioned in the said letter and payment of last instalment of Rs. 3 lacswas proposed to be made on 20.6.2003. By letter dated 22.6.1998, the Respondent No.2 has made a request to the Appellant to waive all compounded and penal interest from April 1996 and to re-schedule the

repayment of the principal amount spreading for another six years i.e. till 2004. A notice was issued by the Appellant to the Respondent No.1 on 20.6.2000 demanding over due amount of Rs.48.84 lacs within 10 days. It is pertinent to note here that the suit was filed in the year 2002. Perusal of these letters show that the Respondent No.1 has miserably failed to prove prima face case.

11. It is to be noted here that the learned trial Judge has no at all considered the letters which are on record. The learned trial Judge merely stated that the total amount of Rs.61,13,236/- is already paid by the Respondent No.1. The learned trial Judge has also stated that there is no reason to touch merit aspect at the interlocutory stage. When existence of prima facie case was to be ascertained by the learned Judge, consideration, though prima facie, was required to be made by the learned Judge of the documents on record. The learned Judge ought to have considered all the material on record and thereafter recorded the finding as regards existence of prima face case. It is crystal clear

that the learned Judge has not at all gone into the merits of the case. In my view, as the Respondents did not establish existence of prima facie case or even existence of some triable issue, the Respondents are not entitled to any Interim Relief.

12. It is true that the impugned order is operating from 17.4.2002. However, it is to be borne in mind that as held by the Apex Court in the case of Haryana Financial Corporation & Anr vs. M/s. Jagdamba Oil Mills & Anr. (supra) scope of judicial review of action under Section 29 is very limited. Apart from failure to prove prima facie case there is a delay on the part of the Respondents in approaching the trial Court. Merely because the impugned order which is prima facie unsustainable is operating for certain length of time, after hearing the Appeal on merits the same can not be ordered to be continued though it is found to be illegal. However, considering the submissions made by the learned Counsel appearing for the Respondents, I enquired with the learned Counsel for the Respondents whether the

Respondents were ready and willing to deposit a reasonable amount in the trial Court without prejudice to their rights and contentions so that the order of status-quo can be continued and suit can be ordered to be heard expeditiously. After taking instructions, learned Counsel for the Respondents expressed inability to deposit any amount.

13. In this view of the matter, the appeal must succeed. Accordingly appeal is allowed with no order as to costs. The impugned Order and Judgment dated 17.4.2002 is quashed and set aside and the application made by the Respondents at exhibit 5 stands dismissed.

14. It is made clear that as the suit is pending, all further actions of the Appellant will be subject to final result of the suit. It is needless to say that the observations which are made in this judgment are made for limited purpose for considering the prayer made by the Respondents for grant of Interim relief and the learned Trial Judge will decide the suit on its own merits.

Hearing of the suit is expedited.

15. Shri Ganguly, learned Counsel appearing for the Respondents requested that the operation of this judgment and order be stayed for a period of 12 weeks. The said request is opposed by the learned Counsel appearing for the appellant.

16. Considering the fact that order of status-quo was operating in favour of the Respondents for sufficiently long time and considering the fact that the Respondents may not get a copy of this judgment immediately, parties are directed to maintain status-quo as of today for a period of 10 weeks from today.

. Parties to act on the authenticated copy of this order.

(A.S.Oka, J.)